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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/025,479	12/19/2001	David T. Bailey	HAU237	7947
7590 03/10/2004				
Steven C. Petersen Hogan & Hartson, LLP Suite 1500 1200 17th Street Denver, CO 80202				
EXAMINER WONG, LESLIE A				
ART UNIT		PAPER NUMBER		
1761				
DATE MAILED: 03/10/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/025,479

Applicant(s)

BAILEY ET AL.

Examiner

Leslie Wong

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 30-33 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 16 and 17 is/are allowed.
- 6) ☐ Claim(s) 1-7, 14, 15, and 18-25 is/are rejected.
- 7) ☐ Claim(s) 8-13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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It is noted that upon further review, the restriction requirement as to plant biomass is withdrawn.

Applicant's election without traverse of coffee as the single disclosed species in papers filed January 8, 2004 is acknowledged. Claims 1-29 will be examined.

Claims 8-13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 16 and 17 are allowed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 14, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamaison et al (Fitoterapia reference) in view of Christ et al (US Patent No. 4,354,035).

Lamaison disclose the isolation of rosmarinic acid from a plant biomass of the Labiatae family using a hydroalcoholic extract (see entire document).

The claims differ as to the specific extraction steps.

Christ et al disclose the extraction of rosmarinic acid from plants comprising extraction with water, adjustment to pH of 2 to 2.5, and extraction with an organic solvent (see entire patent).

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use the specific extraction steps of Christ et al in that of Lamaison et al because the extraction of rosmarinic acid by a hydroalcoholic extract is conventional in the art.

Claims 18-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Christ et al (US Patent No. 4,354,035) or Lamaison et al (Fitoterapia reference).

Christ et al disclose the extraction of rosmarinic acid from plants (see entire patent).

Lamaison disclose the isolation of rosmarinic acid (see entire document).

Claims 26-29 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over JP 62269642.

JP 62269642 teaches the addition of a rosemary extract to coffee (see English abstract).

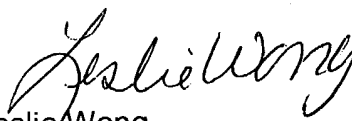
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Applicant claims specific concentration and absorbance values. These limitations are seen as no more than inherent and/or obvious to that of JP 62269642 because the same components are used.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Leslie Wong
Primary Examiner
Art Unit 1761

LAW
March 5, 2004